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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,747	02/09/2004	Edward J. Gough	37167-8012.US00	8688

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EXAMINER

PEFFLEY, MICHAEL F

ART UNIT	PAPER NUMBER
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3739

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/775,747

Applicant(s)

GOUGH ET AL.

Examiner

Michael Peffley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,7-9,11,12,15,18-21,23,24,30-32 and 34-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,7-9,11,12,15,18-21,23,24,30-32 and 34-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3-29-07 and 4-6-07 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 29, 2007 has been entered.

It is noted that applicant has filed an acceptable Terminal Disclaimer that has overcome the Double Patenting rejections. Also, applicant has submitted replacement drawings on March 29, 2007 and supplemented on April 6, 2007, which drawings are approved and accepted.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 1-3, 7-9, 11, 12, 15, 18-21, 23, 24 and 30-32 and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeVeen et al (5,827,276) in view of the teaching of Edwards et al ('675).

LeVeen et al disclose a system that includes an introducer (12) and a plurality of antennas (24) positioned in the introducer and deployable therefrom with a changing direction of travel (i.e. curved). LeVeen et al teach that the antennas are RF electrodes, not microwave antennas, and fail to disclose thermal sensors.

Leveen et al do teach that the introducer is more rigid than the antennas (see Figures) and that the introducer is rigid enough to be introduced through tissue (Figure 4). Also, a slidable insulation sleeve (Figure 8) is provided around each electrode to create a desired ablation volume. LeVeen et al also teach that the introducer may be provided with an electrode (340 – Figure 7 or first set of electrodes 28b in figure 5) connected to the energy source.

With regard to the microwave antennas, the previously addressed Edwards et al device is a substantially identical device that includes an introducer with a plurality of stylets deployable therefrom. Edwards et al specifically disclose the well-known substitution of RF electrodes for microwave antennas in such a system to provide an alternative energy delivery modality for treating tissue. Moreover, applicant's own specification indicates the ready substitution of RF electrodes for microwave antennas and makes no statement of criticality for using one modality in favor of the other. Edwards et al also teach of providing temperature sensors to monitor temperature and control the delivery of energy accordingly, as well as the use of infusion to provide treatment and cooling fluids to tissue.

To have provided the LeVeen et al system with microwave antennas in lieu of the RF electrodes as an alternative treatment modality would have been an obvious consideration for one of ordinary skill in the art, particularly since Edwards et al teach that such a substitution is generally known in the art. To have further provided the LeVeen et al system with a temperature feedback control system and fluid delivery

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capability to control tissue parameters during treatment would have been an obvious modification for one of ordinary skill in the art in view of the Edwards et al.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over LeVeen et al ('276) and Edwards et al ('675) and further in view of the teaching of Edwards et al (5,507,743).

The combination of the Edwards et al teaching of using microwave antennas or RF electrodes to treat tissue and temperature sensors to control the delivery of energy has been previously addressed. The examiner maintains that LeVeen et al disclose providing an introducer that has an electrode (Figures 5 and 7). The electrodes in Figure 5 both deliver RF energy, but the examiner maintains that to have provided one set as microwave electrodes and the other set as RF electrodes would have been an obvious consideration in view of the Edwards et al ('675) teaching. However, to further support such an assertion, attention is directed to the Edwards et al ('743) device that includes an introducer and a plurality of deployed electrodes. In particular, Edwards et al teach that the outer electrode may deliver microwave energy to heat peripheral tissue while RF energy is delivered to the inner electrode to ablate tumor tissue. The examiner maintains that this is a clear teaching of using two separate energy modalities for the treatment of tumor tissue.

To have provided the LeVeen et al system with set of microwave antennas as well as a set of RF electrodes to treat the tumor tissue with two different energy

modalities would have been an obvious consideration for one of ordinary skill in the art, particularly in view of the teaching of Edwards et al ('743).

Response to Arguments

Applicant's arguments filed February 28, 2007 have been fully considered but they are not persuasive.

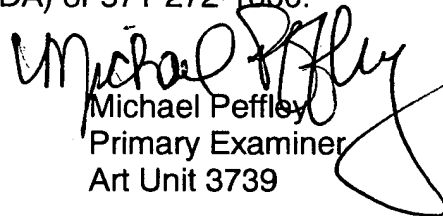
Applicant states that the LeVeen et al tube having an electrode thereon cannot be considered to be "an introducer connected to an RF source". The examiner disagrees. The claim merely calls for an introducer connected to an RF source. There is nothing specific in the claim language that requires the introducer to be made from a conductive material (as is supported in applicant's specification). Applicant's arguments that the tube is not conductive and the conductor is a separate connection does not overcome the simple fact that the electrode is clearly part of the introducer, and the electrode is coupled to an energy source. As such, the introducer is deemed to be connected to the energy source, and the examiner maintains that the interpretation of the broadly recited claimed limitation is fairly met by the LeVeen et al reference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (571) 272-4770. The examiner can normally be reached on Mon-Fri from 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Michael Peffley
Primary Examiner
Art Unit 3739

mp
April 11, 2007